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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiffs,

v.

THE UNITED STATES DEPARTMENT OF
EDUCATION,

Defendants.

Case Number: 17-cv-07106-SK (related case
number 17-cv-7210-SK, *Calvillo Manriquez et
al. v. DeVos, et al.*)

**OPPOSITION OF PLAINTIFFS IN
RELATED CASE CALVILLO
MANRIQUEZ, ET AL. V. DEVOS, ET AL.,
17-cv-7210-SK, TO DEFENDANTS'
MOTION FOR LEAVE TO FILE MOTION
FOR PARTIAL RECONSIDERATION OF
THE DECEMBER 27, 2019 ORDER**

Defendants’ Motion for Leave to File a Motion for Partial Reconsideration of the Court’s December 27, 2019 Order (Dkt. No. 118, “Motion for Leave”) was not brought with reasonable diligence, and fails to meet any other requirement of Civ. L.R. 7-9(b). On February 28, 2020, Defendants will be producing the same Administrative Record in both *California v. Dept. of Education, et al.*, 17-cv-07106-SK and *Calvillo Manriquez et al. v. DeVos, et al.*, 17-cv-7210-SK, pursuant to the Joint Stipulation of the Defendants and the *Calvillo Manriquez* Plaintiffs. *See* 17-cv-7210-SK, Dkt. No. 189 (Feb. 13, 2020). Defendants’ lack of diligence bringing their Motion for Leave directly impacts both cases, and underscores their apparent ongoing strategy of delay. These related cases have been pending for over two years, and Defendants have still not produced an Administrative Record in the *Calvillo Manriquez* matter. The *Calvillo Manriquez* Plaintiffs respectfully request that the Court deny the Defendants’ Motion for Leave.

In the seven weeks between the Court’s December 27, 2019 Order and February 18, 2020, when Defendants filed their Motion for Leave, nothing happened to change the arguments in Defendants’ Motion or to justify their delay. Defendants claim that their ability to file a timely motion was impacted by attorney vacations and holidays, litigation deadlines and settlement conferences, and the complexity of the issues. But these factors do not excuse Defendants’ lack of diligence. *See, e.g., York v. Bank of Am.*, No. 14-02471, 2016 WL 7033956, at *1 (N.D.Cal. Dec. 2, 2017) (citing *Largan Precision Co, Ltd v. Genius Elec. Optical Co.*, No. 13-CV-02502-JD, 2015 WL 2063988, at *2 (N.D. Cal. May 4, 2015)) (Denying a motion for leave to file a motion for reconsideration in part because an inexplicable 35-day delay was “lengthy,” making the motion “stale” under Civ. L.R. 7-9(b)); *see also Iopa v. Saltchuk-Young Bros., Ltd.*, 916 F.3d 1298, 1302 (9th Cir. 2019) (affirming the denial of an untimely petition for attorneys’ fees in part because “the usual excuse that the lawyer is too busy [] can be used, perhaps truthfully, in almost every case”) (internal quotations omitted).

Defendants’ delay here is particularly notable because they could and should have addressed the “complexity” of the issues more quickly, but they simply waited, as apparent from filings within the seven-week period. For example, in the January 27, 2020 Joint Status Report

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1 in *California v. Dept. of Education, et al.*, 17-cv-07106-SK, Defendants stated: “Defendants
 2 respectfully submit that they are ***still considering*** their options with respect to [the Dec. 27, 2019]
 3 order...” Dkt. No. 110 at 3-4 (emphasis added). Under Civ. L.R. 7-9(b), Defendants are required
 4 to “specifically show reasonable diligence.” Defendants have not come close to doing so.

5 Defendants also fail to show any “manifest failure by the Court to consider material facts
 6 or dispositive legal arguments...” which is their only stated basis for their Motion to Leave under
 7 Local Rule 7-9(b). Motion for Leave at 13. However, the Court considered multiple rounds of
 8 briefing and examined the documents at issue *in camera* before issuing its December 27, 2019
 9 Order. See *California v. Dept. of Education, et al.*, 17-cv-07106-SK (Dkt. Nos.66, 81, 90, 94,
 10 97, and 104). The December 27, 2019 Order itself plainly addresses the parties’ arguments,
 11 relevant facts and law, and the documents themselves, concluding that (1) four documents at
 12 issue had been considered by the Department in creating the Partial Relief Rule (*Id.*, Dkt. No.
 13 105 at 6-7); (2) those documents were not protected by the deliberative-process privilege (*id* at 8-
 14 12); and (3) Defendants had waived the attorney-client privilege and the work-product doctrine
 15 with respect to documents that had been introduced into the Congressional Record. *Id.* at 13-14.

16 Defendants’ Motion for Leave is plainly an attempt to delay having to produce and
 17 complete the Administrative Record in both related cases because they wish to exclude the
 18 documents at issue in the December 27, 2019 Order. Their desire is not a reasonable argument
 19 for reconsideration of the Court’s Order under Civ. L.R. 7-9(b).

20 CONCLUSION

21 For the foregoing reasons, the *Calvillo Manriquez* Plaintiffs respectfully request that the
 22 Court deny the Defendants’ Motion for Leave to File a Motion for Reconsideration of the
 23 Court’s December 27, 2020 Order.

24
 25 Dated: February 24, 2020

Respectfully submitted,

26 /s/ Margaret E. O’Grady

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